

**MINUTES  
LIVESTOCK FACILITY SITING REVIEW BOARD  
TELECONFERENCE MEETING**

**September 21, 2007  
Room 411, 2811 Agriculture Drive, Madison, WI**

Chair Holte called the meeting to order at 12 p.m., and Price took the roll call. LFSRB members present were Lee Engelbrecht, Andy Johnson, Bob Selk (in at 12:07 p.m.), Bob Topel, Jerome Gaska, and Fran Byerly. A quorum was present. DATCP staff present were Cheryl Daniels and Lori Price.

**Call to order**

Daniels stated the meeting agenda and amendments to the agenda had been publicly noticed, as required. Holte presented the agenda for approval. Johnson moved to approve the agenda, and Byerly seconded the motion. The motion passed.

Holte presented the August 17, 2007, meeting minutes for approval. Johnson moved to approve the minutes as written, and Byerly seconded the motion. The motion passed.

**Larson Acres, Inc. v. Town of Magnolia case, Docket #07-L-01—motion for reconsideration**

Before the board began their discussion on the motion for reconsideration, Daniels commented on the legal process that allows for this type of motion. She stated that motions for reconsideration are not covered in Wisconsin Statute 93.90 that addresses appealing decisions to the circuit court. However, these types of motions are covered under Wisconsin Statute 227.49 on petitions for rehearing in contested cases. This statute allows aggrieved parties to request a rehearing of a case through the motion for reconsideration. Rehearing of a case is granted only on specific bases—material error of law; material error of fact; or the discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Filing a motion for reconsideration does not delay the board's original order but will delay an appeal to the circuit court. The board has the option of dealing with the motion within 30 days, or letting it lapse and after 30 days it would be considered denied. Today's meeting will address whether the board will grant the motion for reconsideration. The Town of Magnolia based its motion on errors of fact and law. The errors of fact were Larson's permit application did not request approval for a new or expanded facility, and the DNR and DATCP were aware of the evidence showing Larson's application of the 590 standards is resulting in ground and surface water pollution. The error of law was granting a conditional use permit for the facility did not strip the Town of the power to monitor compliance with local and state environmental standards.

The board members discussed the two errors of fact first. The board members agreed that the application was a request for an expansion and that this was confirmed during the discussion on issues on appeal at the July 20<sup>th</sup> meeting. The board members also agreed that at the July 20<sup>th</sup> meeting, they had discussed the Town dealing with groundwater issues and had come to the conclusion these issues are dealt more appropriately through a different forum other than the

LFSRB. On the error of law, the board members agreed that the Town does have the authority to monitor centered around the livestock facility siting standards and cannot seek application of other laws under the siting process.

After the discussion, Gaska made a motion to deny the motion for reconsideration. Topel seconded the motion. A roll call vote was taken: Byerly-aye, Engelbrecht-aye, Gaska-aye, Holte-aye, Johnson-aye, Selk-aye, and Topel-aye. The motion passed.

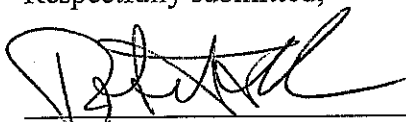
**Adams, et al. v. Livestock Facility Siting Review Board, and Town of Magnolia v. Livestock Facility Siting Review Board appeals to Rock County Circuit Court filed 9/14/07**

Daniels reported that two different appeals were filed with the Rock County Circuit court. The first one was filed by eight people within the two-mile radius of the facility. The second one was filed by the Town of Magnolia. Both appeals were filed against the board. DATCP staff are preparing to send the case record along with the index to the court. Daniels had sent a letter to Kevin Potter with the Department of Justice, Division of Legal Services, requesting a review of the case and asking for DOJ to represent the board in this matter. DOJ staff will begin the review of the case once they receive the documents from DATCP. Mr. Potter did inform Daniels that DOJ is also working on a request for a legal opinion on the livestock siting law submitted by DATCP, but the appeals will be dealt with first. DOJ staff will want to meet with the board members to discuss litigation deliberation. This meeting will be done under closed session. Daniels will keep the board informed of when this meeting might take place. Selk requested copies of the legal opinion request be sent to board members. Daniels will also send out copies of her letter to Mr. Potter. Topel asked if both appeals would be brought before the same judge at the same time. Daniels responded that she did not know for sure if this would happen but would guess that it might. The board can also request through their litigation counsel that both appeal cases be consolidated. Gaska asked about the status of the stay of enforcement of the board's decision. Daniels responded the stay request should go before the judge and heard fairly quickly. Typically, a stay is viewed in the light most favorable to the non-moving party, the board; and whether there would be irreparable harm by enforcing the board's order; and whether any actions in favor of the petitioners could not be done at a later time or needed to be done immediately. She will talk with the board's litigation counsel to find out the status of the stay request.

**Adjourn**

Johnson moved to adjourn the meeting, and Selk seconded the motion. The motion passed. The meeting ended at 12:34 p.m.

Respectfully submitted,



Bob Selk, Secretary

11.29.07

Date

Recorder: LP